

1.0 INTRODUCTION

Issues such as land tenure are of great concern in countries like Lesotho where food security is a priority and most people rely on agriculture for their livelihoods. Agriculture provides rural households with cash and non-cash incomes that are essential for their survival. Rural urban linkages mean that some urban households also depend on rural agriculture. In theory because land in Lesotho is obtained free it is accessible to almost every household. However, landlessness has increased in the last two decades exacerbating inequalities and vulnerability.

Basotho Customary Law is largely unwritten. The Laws of Leretholi, first documented by the Basutoland Council in 1903, are the principle written source. They have been amended on several occasions, the most recent edition dating from 1959. These laws contain provisions dealing with land tenure and rulings on land use. However, customary law administered by the chiefs remained the paramount legal basis for land tenure throughout the seventies. From 1959 onwards, legislation introduced wide-ranging changes to traditional land tenure.

The current legislation governing land allocations, acquisitions, transfers and use is embodied in the Land Husbandry Act of 1969 and the Land Act of 1979 and subsequent amendments (Phororo, 1986). Under these laws land belongs to the nation as a whole with land rights vested in the King as guardian and trustee (Morapeli, 1990). These rights are delegated directly to chiefs and Village Development Councils (VDCs) for allocating, opening up and closing arable and grazing lands and withdrawing land to sanction defaulters (Mashinini, 2000). Principal and ward chiefs control the opening and closing of mountain grazing lands. Rights to arable land are allocated to individual farmers while grazing rights are communal.

Under this system relatives inherit a deceased persons allotment of arable land in the absence of a will stating otherwise (Land Review Commission, 2000). The system provides for allotment holders to apply for a lease on land allocated to them. This lease can be transferred, sub-leased, rented or used as collateral to obtain a loan. The system gives women land rights, implying that they are entitled to inherit land. However, allotment holders lose their rights to land if it lies fallow for more than two years (Mashinini, 2000, Land Policy Reform Commission, 1987, 2000). Based on these provisions many authors have complimented the Lesotho land tenure system for its equity, flexibility and ability to respond to socio-economic and environmental changes (Phororo, 1986; WCARRD, 1982; Mahao, 1991; Maxwell, 1991; Land Policy Review commission, 1987).

Lately, the spread of HIV/AIDS, with 73 179 reported cases in 1998 (9.8 per cent of the total population), is threatening agriculture based survival strategies (GoL, 1998). It is eroding the human resource base and threatening to increase problems of access, use and rights to land for community members. In particular, the epidemic threatens to increase the number of orphaned children at risk of losing rights and access to family agricultural land, thus decreasing food security. These trends point towards a bleak future unless major changes are made.

1.1 Statement Of The Problem

Despite its equitable nature, Lesotho's land tenure system does not make allowances for the AIDS pandemic facing many agrarian communities today. The morbidity and mortality resulting from HIV/AIDS impact negatively on coping strategies, affecting the ability of households to use their assets, including land and labour, effectively. Affected households also lose their savings and investments to medical and funeral costs.

In an attempt to ensure survival many households resort to strategies with negative long-term implications for sustainable livelihoods, which include land use conversions clearly motivated by economic pressures. HIV/AIDS is likely to have aggravated these transactions, which have seriously affected access to land, land use and agricultural productivity. Most importantly they imply that land holdings will eventually be concentrated in the hands of a few rich people.

This pessimism is due to the provision in the 1979 Land Act for the reallocation of land left fallow for more than two successive years. Meant to ensure equity, this provision risks creating greater disparity in a socio-economic situation that may motivate vulnerable landholders to sell their land before they can be dispossessed. The experiences of households that have been affected by HIV/AIDS regarding this issue have not been documented. It is also not clear how the provisions on fallow land, and the erratic and illegal land sales relatives may pursue due to economic pressures will affect orphans. This lack of information makes it useful to document the extent to which families and other custodians such as traditional authorities and development committees protect orphans' and widows' rights to land.

Since most people in rural areas depend on agriculture, land laws affect their livelihood strategies. The provision for leasing land gives those who cannot use the land productively, including the poor, women, the elderly, and those with Aids or other illnesses, the opportunity to earn cash to offset their financial burdens. This opportunity has not been tapped.

These possibilities and realities may have serious implications for sustainable livelihoods and food security in Lesotho, particularly as what the law stipulates often differs from what happens in practice.

1.2 OBJECTIVES

The Objectives of the Study Were:

- To identify the coping strategies that households affected by HIV/AIDS adopt in order to survive.
- To assess how these coping strategies are related to land tenure provisions and their implications for food security and sustainable livelihoods.
- To document the experiences of affected families regarding protection of the land rights of widows and orphans.
- To find out the extent to which the provision for leases has provided opportunities for households affected by HIV/AIDS.

1.3 METHODOLOGY

The methodology adopted for this study was meant to obtain qualitative data and to address the historical and the current situation. This called for a variety of methods and techniques.

1.3.1 Literature Review

To contextualise the study existing literature on the prevalence and magnitude of HIV/AIDS in Lesotho was reviewed. This included examining documentation of government and NGO responses to the problem. The strengths and limitations of HIV/AIDS policy in Lesotho were analysed in order to gain an understanding of the epidemic at the national level.

Literature on land policy and issues in Lesotho was examined to establish linkages between sustainable livelihoods and land tenure. This contributed to analysis of the implications of

HIV/AIDS for land tenure. The implications and questions raised in the literature review were followed up with households, communities and institutions at grassroots level using participatory approaches.

1.3.2 Institutional Surveys

Issues raised in the literature review were pursued at grass roots and national levels to find out if opportunities embodied in the National HIV/AIDS policy and the land laws bore fruit on the ground. Another aim was to find out how affected and infected households coped with the limitations and weaknesses of policy and legislation.

Primary data was collected through interviews with key informants from the following institutions dealing with land issues and HIV/AIDS.

1.3.2.1 HIV/AIDS Related Institutions

These interviews focused on activities meant to alleviate the impact of HIV/AIDS, organisational policies, how such policies are reflected at grass roots level and their relationship with national HIV/AIDS policy. Informants were asked to identify weaknesses and limitations in their programmes and how they planned to deal with them in future.

The institutions were:

- Lesotho AIDS Programme Coordinating Authority (LAPCA) under the Prime Minister's Office.
- The National Health AIDS programme - under the Ministry of Health.
- Lesotho AIDS Education and Community counselling Association (LAICA)
- The AIDS Unit of the Ministry of Agriculture.

1.3.2.2 Institutions Dealing with Land Issues

Interviews focused on how current policies cater for HIV/AIDS affected households, experiences with the administration and implementation of land legislation, the challenges presented by HIV/AIDS, major strategies adopted to combat the problem, and whether current policies were integrated with the National HIV/AIDS policy.

Institutions covered were:

- Ministry of Local Government
- Ministry of Agriculture
- Agricultural Planning Policy Section in the Ministry of Agriculture

1.3.2.3 Local institutional surveys

Local level surveys entailed interviews with traditional and modern land management institutions in the form of the chieftainship and Village Development Councils. These surveys explored the opportunities these institutions afforded HIV/AIDS affected people, how the land law provisions are being used and how they affect the livelihoods of HIV/AIDS affected households. The aim was to identify how these laws improved or worsened the situation of affected households, their limitations, and how HIV/AIDS impacts on land issues at community level.

Other local level institutions interviewed included the Lesotho Highlands Development Authority (LHDP), church authorities and hospitals. Social workers and health workers were interviewed on their current programmes and perceptions of the impacts of HIV/AIDS on land issues and livelihoods.

1.3.3 Community and Group Discussions

Consultations in the two communities of Ha Poli and Matsatsaneng were conducted through their respective chiefs. Data was collected using different participatory methods. The discussion covered questions on land issues, community health problems and livelihoods of the people.

Since HIV/AIDS carries a stigma, researchers avoided using these words or any other local or Sesotho terms related to HIV/AIDS to ensure rapport with participants. The term chronic illness was used and informants were asked to specify the symptoms they experience, their frequency and prevalence to identify links with the clinical symptoms of HIV/AIDS. The term HIV/AIDS was only used in discussions and interviews after the participants had mentioned it and shown willingness to discuss the issue. Researchers adopted this strategy to protect people who were willing to share their knowledge and experiences from stigmatisation by the community.

The specific methods used in these discussions included the following:

In community gatherings (*pitsos*)

- Timelines were used to gauge the onset of chronic illnesses among community members.
- Social Maps were used to indicate the distribution and location of vulnerable groups in the community.
- Participatory Land Use Mapping and transects were aimed at locating agricultural lands that had been left fallow.

Focus group discussions were held with men's, women's and youth groups; chiefs, community leaders and elderly men; and health workers, AIDS counsellors and hospital authorities. The following techniques were used:

- Brainstorming exercises were used to assess their knowledge about HIV/AIDS, its magnitude and contributing factors, and their familiarity with land legislation.
- Ranking and Rating techniques were used to rank HIV/AIDS in relation to other community problems.
- Impact Analysis was used to determine aspects of land issues impacted most by the epidemic. This technique was also used to analyse the impact of HIV/AIDS on livelihoods at community level.
- Group discussions were used to pursue issues concerning widows and orphans land rights.

Observations were also used to cross check on responses given by groups on fallow land, land size and services available in the community.

1.3.4 Household In-depth Interviews

Household in-depth interviews were conducted with households that health workers said were affected by HIV/AIDS, or where a household member was willing to be interviewed and either admitted being infected with HIV/AIDS or stated that the household was affected by chronic illness. Health workers and counsellors played a crucial part in this part of the study since they had worked with affected households and infected individuals for some time. The relationships of confidentiality and trust they had established enabled the affected households and infected individuals to open up to the researchers.

Twenty in-depth interviews were conducted in the two communities. Where possible interviews were conducted with the infected individuals. Failing this with an adult household member – in most cases the spouse of an ailing member.

The techniques and issues covered included:

- In depth discussion to determine the composition of the households and demographic changes over the last five years or so,
- Livelihood Analysis and Impact Analysis to find out activities, sources of livelihood and how these had been affected by HIV/AIDS.
- Brainstorming to elicit suggestions on services needed for their survival and to cover the question of stigmatisation.
- Impact Analysis to determine how the disease affected income generation, land use and the inheritance of family assets such as land.
- Discussion to find out about the predicament of widows and orphans.

1.3.5 Analysis

The analytic framework adopted linked the literature review and empirical evidence. First, the analysis contextualised the HIV/AIDS problem by describing the socio-economic setting of the country and the magnitude of the epidemic. A historical analysis of land tenure and an examination of the Lesotho AIDS policy were made. These exercises identified questions on, and implications for, the probable impacts of HIV/AIDS on land issues and livelihoods. These were investigated at national and grass roots levels through interviews and participatory approaches.

The investigation identified the impacts of HIV/AIDS on land issues by linking land tenure to livelihoods and coping strategies. It also examined the role of people's perceptions on HIV/AIDS and how they influenced the adoption and avoidance of certain actions. In particular, it examined the links between perceptions and stigmatisation and how these links have moulded the impacts of HIV/AIDS.

On this basis, conclusions were drawn on the impacts of HIV/AIDS on land issues and livelihoods and these conclusions were related to the objectives of the study.

1.3.6 Location of the Study Areas

The researchers identified two locations for the study based on different considerations dictated by the terms of reference and the study objectives.

Ha Poli in the Katse Catchment Area was selected because:

- The area represents the highlands regions of Lesotho. Study objectives and methodology made a deliberate effort to separate the lowlands from the highlands due to varied access to arable land and the connection between land and agricultural activities that sustain livelihoods in the rural areas;
- It is one of the areas in the country with a high prevalence of HIV/AIDS due to inward migration during the Lesotho Highlands Water Project (LHWP);
- The area has also experienced land losses due to LHWP activities.

Matsatsaneng in Botha Bothe Area was selected because:

- It represents the lowlands and the foothills;
- Households have relatively large arable lands (fields) compared to the mountain regions;
- It is closer to urban areas where conversions and urban sprawl are more prevalent;

- It was assumed that the community will have information on and be experiencing the problem of HIV/AIDS as Botha Bothe has also experienced an influx of migrants due to the LHWP construction work;
- Due to its proximity to the urban area, it was expected that communities would have information on HIV/AIDS, land laws and policies.